



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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March 1, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Amendment of the Commission's Rules
To Permit Flexible Service Offerings
in the Commercial Mobile Radio Services
WT Docket No. 96-6

Dear Mr. Caton:

Please find enclosed for filing the original and nine copies of the Organization for the Promotion and Advancement of Small Telecommunications Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Lisa M. Zaina".

Lisa M. Zaina
General Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 96-6
To Permit Flexible Service Offerings)	
in the Commercial Mobile Radio Services)	

**COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

OPASTCO
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**COMMENTS OF
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I. INTRODUCTION

On January 26, 1996, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking¹ concerning the matter of broadband commercial mobile radio service (CMRS) licensees' provision of fixed local loop service. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits its comments in response to the Commission's NPRM.

OPASTCO is a national trade association of more than 450 independently owned and operated telephone companies serving

¹In the Matter of Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, Notice of Proposed Rulemaking, 61 FR 6189 (February 16, 1996). (NPRM, Notice)

rural areas of the United States and Canada. Its members, which include both commercial companies and cooperatives, together serve over two million customers. More than half of OPASTCO's members provide some form of broadband CMRS.

OPASTCO believes that to the extent CMRS providers choose to offer fixed local loop service, such service must be regulated the same as landline local exchange service, under Title II of the Communications Act. OPASTCO does not seek to inhibit wireless companies' provision of fixed local loop service. Nor does it wish to burden wireless companies' mobile service operations with any additional regulation. To the contrary, OPASTCO members desire the full range of options and reasonable regulation for their own wireless interests. However, regulation of fixed wireless local loop service under Title II is essential to set a proper precedent of regulatory parity among like-services as the industry embarks on a new era and for ensuring the continuation of universal service and a high rate of subscriber penetration in rural areas.

II. FCC PRECEDENT AND THE TELECOMMUNICATIONS ACT OF 1996 SUPPORT REGULATING FIXED WIRELESS LOCAL LOOP SERVICE THE SAME AS LANDLINE LOCAL SERVICE

As the Commission well knows, the passage of the Telecommunications Act of 1996² will (eventually) permit telecommunications companies, previously restricted as to the services they could provide, to offer any and all manner of telecommunications services. Over time, as this new world takes shape, it will be difficult to tag companies as a local exchange carrier (LEC) or a cellular provider or cable company. Instead, companies will more likely be referred to simply as telecommunications service providers. To create any sense of order and fairness in this new environment, it is essential that the FCC establish a regulatory paradigm of regulation based on services that would compete directly with one another, not on the primary service offerings of companies prior to the 1996 Act. Under this model, fixed wireless local loop service should be regulated under Title II of the Communications Act as is the traditional landline local service it is intended to replace. This would create a level playing field for all companies

²Pub. L. No. 104-104, 110 Stat. 56 (1996). (1996 Act)

providing fixed local loop service. Both the FCC and the 1996 Act have already paved the way for such a regulatory scheme.

In the Notice, the Commission acknowledges that its CMRS Second Report and Order³ excludes from the mobile definition those services which are solely fixed in nature, such as Basic Exchange Telephone Radio Service (BETRS).⁴ In its explanation for why BETRS does not constitute a mobile service, the Second Report and Order states that BETRS "was intended to be an extension of intrastate basic exchange telephone service" and that "the radio loop merely **takes the place** of wire or cable, which in rural and geophysically rugged areas is often prohibitively expensive to install and maintain." (emphasis added)⁵ This is precisely the same rationale the Commission uses in its NPRM for permitting CMRS providers to offer fixed service as the primary use of their spectrum: "...to use radio links to **replace** existing wireline service or to bring service to rural or

³In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1424-25 (1994).

⁴Notice at para. 3.

⁵9 FCC Rcd 1425.

less attractive areas otherwise not being adequately served by wireline providers." (emphasis added)⁶

When deciding not to constitute BETRS as a mobile service, the Commission implicitly recognized that it is the service being provided (fixed) and the geographic area in which it is provided (local exchange), that defined the relevant market and hence its categorization. The method of transmission of the service in this instance (landline or radio-based) is immaterial because it is transparent to the customer. Thus, if wireless service providers are to offer fixed local loop service that would serve as a substitute to LECs' landline service, it follows, based on FCC precedent, that this service must be regulated under Title II.

The 1996 Act defines a local exchange carrier as "any person that is engaged in the provision of telephone exchange service or exchange access." The definition goes on to state that "such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such

⁶Notice at para. 5.

service should be included in the definition of such term."⁷ The Commission should note that the definition refers to CMRS simply as commercial mobile service, leaving out the method of transmission of such service -- radio. Thus, if a wireless service provider is offering fixed local loop service, that service should not be considered a mobile service under the 1996 Act; the radio-based transmission of the service is irrelevant. What is relevant is that if offering a fixed local loop service, the wireless service provider would be "engaged in the provision of telephone exchange service." It is therefore incumbent upon the FCC to include a wireless provider's fixed local loop service in the Act's definition of local exchange carrier, subjecting the service to the same regulation that a LEC must abide by.

III. REGULATING FIXED WIRELESS LOCAL LOOP SERVICE AS A MOBILE SERVICE WOULD THREATEN UNIVERSAL SERVICE AND SUBSCRIBER PENETRATION IN RURAL AREAS

Beyond the academic theorizing over the appropriate regulatory paradigm, there is the very real and detrimental impact that lumping fixed wireless local loop service in with other mobile services would have on universal service and subscribership in rural areas. The 1996 Act allows States to

⁷1996 Act at Sec. 3(a)(2)"(44)."

require a telecommunications carrier that seeks to provide telephone exchange service in a service area served by a rural telephone company to meet the Act's requirements for designation as an eligible telecommunications carrier before being permitted to provide such service.⁸ To receive this designation, a carrier must offer universal service⁹ throughout the entire service area.¹⁰ This State authority, however, does not extend to providers of commercial mobile services.¹¹ Thus, if the FCC were to treat fixed wireless local loop service as just another mobile service, these companies would be permitted to offer service only to the most profitable customers in a rural service area, leaving behind the remote, high-cost residential subscribers that the

⁸1996 Act at Sec. 101, "Sec. 253(f)."

⁹The 1996 Act requires a Federal-State Board and the Commission to base its universal service policies on numerous principles, some of which include: quality service available at just, reasonable and affordable rates; access to advanced telecommunications and information services provided in all regions of the Nation; and access for consumers of all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. 1996 Act at Sec. 101, "Sec. 254(b)."

¹⁰1996 Act at Sec. 102(a) "(e) (1) (A)."

¹¹1996 Act at Sec. 101, "Sec. 253(f) (2)."

rural LEC is required to serve. In addition, they would not be bound to provide universal service to the customers they did choose to offer service, as defined by the Joint Board and the Commission.

And, as if that would not be enough of a competitive handicap, these wireless service providers would also not have to bill customers the federally mandated subscriber line charge (SLC), as do LECs. This would provide these companies with an automatic \$3.50 pricing advantage for residential and single-line business subscribers and an even more devastating \$6 price advantage for multiline business subscribers. No rural LEC could be expected to compete at such a disadvantage, nor should they.

The end result of these disparities is that the wireless provider would creamskim the rural LEC's most profitable customers, forcing rates to increase for the remote residential subscribers that the wireless provider is unwilling to serve. This may force some subscribers to drop off the network, a trend for which the Commission has shown great concern.¹² In addition, the initial loss of business customers and the subsequent loss of

¹²See, In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket No. 95-115, Notice of Proposed Rulemaking, 60 FR 44296 (August 25, 1995).

residential subscribers could trigger a "death spiral" leading to financial uncertainty for the small LEC and jeopardizing service in its area. In creating its exemption for commercial mobile service providers, clearly it was not the intent of the legislation that such services would encompass those that compete head-on with rural telephone companies' local exchange service. OPASTCO urges the Commission to consider the impact that its proposed regulatory scheme could have on subscriber penetration and the provision of universal service in rural areas.

IV. CONCLUSION

FCC Chairman Reed Hundt recently stated that two key goals of the Commission are to promote competition rather than individual competitors and to protect "the public interest forever."¹³ The Commission's proposal to treat fixed wireless local loop service as an integral part of the CMRS services offered by a CMRS provider¹⁴ is at odds with both of these goals. With regard to the first goal, the FCC's proposal would, in Commissioner Rachelle Chong's words, allow CMRS providers

¹³"RHCs Expected to Delay In-Region Long Distance Until FCC Finishes Checklist," Communications Daily, February 13, 1996, Vol. 16, No. 30, p. 1.

¹⁴Notice at para. 20.

"regulatory latitude" to "encourage" them to provide wireless fixed local loop services.¹⁵ This smacks of industrial engineering and favoritism towards a particular industry segment. As to the second goal, the proposal is completely contrary to the public interest by threatening rural LECs' impressive record of providing ubiquitous high-quality local service and access to inter-LATA service providers¹⁶ at reasonable rates.

¹⁵Notice, Separate Statement of Commissioner Rachelle B. Chong.

¹⁶The 1996 Act also exempts commercial mobile providers from providing equal access to common carriers for the provision of telephone toll services. 1996 Act at Sec. 705. The Commission should consider this as well when deciding how to classify and regulate fixed wireless local loop service.

Therefore, OPASTCO urges the FCC to regulate fixed wireless local loop service as it does landline local exchange service, under Title II of the Communications Act. In so doing, the Commission will achieve Chairman Hundt's goals by ensuring a level playing field for all competitors of fixed local loop service and protecting the high level of subscriber penetration rural telephone companies have maintained in their service areas.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

By: Stuart Polikoff
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Regulatory and
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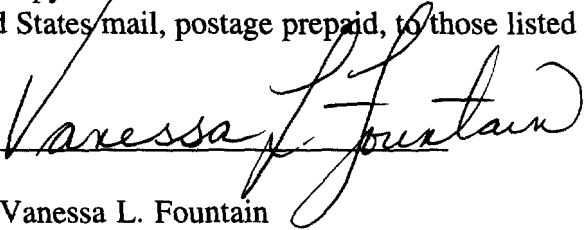
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March 1, 1996

CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that a copy of OPASTCO's comments was sent on this, the 1st day of March, 1996 by first class United States mail, postage prepaid, to those listed on the attached sheet.


Vanessa L. Fountain

SERVICE LIST
WT Docket No. 96-6

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